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Attorneys for Defendant, Counter-Claimant and Cross-Claimant,

WESTCHESTER FIRE INSURANCE COMPANY

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

LENSCRAFTERS, INC.; and EYEXAM OF
CALIFORNIA, INC.,

Plaintiffs,

vs.

LIBERTY MUTUAL FIRE INSURANCE
COMPANY; EXECUTIVE RISK SPECIALTY
INSURANCE COMPANY; UNITED STATES
FIRE INSURANCE COMPANY; MARKEL
AMERICAN INSURANCE COMPANY; and
WESTCHESTER FIRE INSURANCE
COMPANY,

Defendants.

AND RELATED COUNTER AND CROSS-
CLAIMS

CASE NO. C-07-2853 SBA

E-FILING

**STIPULATION TO WITHDRAW
WESTCHESTER FIRE INSURANCE
COMPANY'S MOTION TO DISMISS THE
SECOND AND THIRD CLAIMS FOR
RELIEF OF PLAINTIFFS' FIRST
AMENDED COMPLAINT; [PROPOSED]
ORDER THEREON**

Hearing Date: January 29, 2008

Time: 1:00 p.m.

Courtroom: 3

The Hon. Sandra Brown Armstrong

WHEREAS, on or about October 19, 2007, Defendant, Counter-Claimant and Cross-Claimant,
WESTCHESTER FIRE INSURANCE COMPANY ("Westchester Fire") filed and served its Motion to Dismiss
the Second and Third Claims for Relief of the First Amended Complaint of Plaintiffs, LENCRAFTERS, INC.
and EYEXAM OF CALIFORNIA, INC. (collectively, "LensCrafters" or "Plaintiffs");

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1 WHEREAS, said Motion to Dismiss has been fully briefed by the parties thereto, with LensCrafters having
2 filed and served its opposition, and Westchester Fire having filed and served its reply to LensCrafters' opposition
3 papers.

4 WHEREAS, said Motion to Dismiss had been set for hearing on January 29, 2008, but as of the date of
5 execution of this stipulation, the Court has not ruled thereon;

6 WHEREAS, a conditional settlement has been reached by and between Westchester Fire and LensCrafters
7 as respects both this case and the underlying class action lawsuit, *Snow v. LensCrafters, Inc., et al.*, San
8 Francisco Superior Court Case No. CGC-02-40554, out of which the instant action arises;


9 AND WHEREAS LensCrafters and Westchester Fire will, pursuant to the conditional settlement, be
10 submitting to the Court in the near future either a Stipulation or Motions to dismiss, without prejudice, their
11 respective complaint/counter-claim against each other;

12 NOW THEREFORE, Westchester Fire, being the moving party, and LensCrafters, being the opposing
13 parties, do hereby stipulate that Westchester Fire shall withdraw its pending Motion to Dismiss.
14

15 DATED: February 7, 2008

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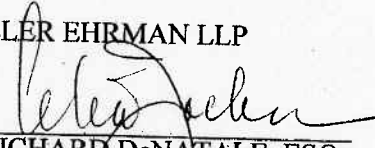
17 By


18 ROBERT D. DENNISON, ESQ.
19 GARY L. GREEN, ESQ.
20 Attorneys for Defendant, Counter-Claimant and
Cross-Claimant, WESTCHESTER FIRE
INSURANCE COMPANY

21 DATED: February 7, 2008

HELLER EHRMAN LLP

23 By


24 RICHARD DeNATALE, ESQ.
25 CELIA M. JACKSON, ESQ.
26 Attorneys for Plaintiffs, LENS CRAFTERS, INC, and
27 EYEXAM OF CALIFORNIA, INC.,
28

///

ORDER

Good cause appearing therefor, IT IS HEREBY ORDERED that Defendant, Counter-Claimant and Cross-Claimant, Westchester Fire's Motion to Dismiss the Second and Third Claims for Relief of the First Amended Complaint of Plaintiffs is deemed withdrawn and is hereby placed off calendar.

DATED: February __, 2008

United States District Judge

PROOF OF SERVICE

I, SHIRLEY AOKI, am employed in the aforesaid county, State of California: I am over the age of 18 years and not a party to the within action: my business address is 5959 West Century Boulevard, Suite 1100, Los Angeles, California 90045.

On February 7, 2008, I served the following document described as:

**STIPULATION TO WITHDRAW WESTCHESTER FIRE INSURANCE COMPANY'S
MOTION TO DISMISS THE SECOND AND THIRD CLAIMS FOR RELIEF OF PLAINTIFFS'
FIRST AMENDED COMPLAINT; [PROPOSED] ORDER THEREON**

VIA THE UNITED STATES DISTRICT COURT ELECTRONIC FILING SERVICE on interested parties in this action set forth below:

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Executed on February 7, 2008, at Los Angeles, California. I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


SHIRLEY AOKI